

963 CMR 1.00

MASSACHUSETTS SCHOOL BUILDING AUTHORITY

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1.01 Authority, Applicability, Scope and Purpose

(1) 963 CMR 1:00, *et seq.* is promulgated by the Massachusetts School Building Authority established by M.G.L. c. 70B pursuant to rule-making authority conferred by said M.G.L. c. 70B and St. 2004, c. 208 for the implementation of that statute and the School Building Grant Program it establishes, all is consistent with M.G.L. c. 30 and 30A and shall take effect upon promulgation.

(2) The provisions of 963 CMR 1.00 *et seq.* shall apply to all Eligible Applicants and all Projects for which an Eligible Applicant is seeking to fund a portion of a municipally-owned school project with a grant from the Authority pursuant to M.G.L. c. 70B.

(3) Except with respect to the express provisions of 963 CMR 1.00 *et seq.* or as otherwise provided by law, including St. 2004, c. 208, all school projects previously awarded school building assistance grants by the Department of Education or grandfathered under the provisions of section 45 of said c.208 shall continue to be governed by the provisions of 603 CMR 38.00 and Department of Education policies, guidelines, and practices in effect at the time.

(4) No city, town, regional school district, or independent agricultural and technical school shall have any entitlement to funds under M.G.L. c. 70B or the provisions of 963 CMR 1.00 *et seq.*

(5) 963 CMR 1.00 *et seq.* sets forth the Authority's authority and responsibilities to achieve the effective planning, management and financial sustainability of a grant program to provide partial funding for municipally-owned school projects and sets forth the requirements which shall be met, the standards which shall be applied, and the procedures which shall be followed in the application for and the awarding of Authority school building grants. The Authority may issue supplemental policies, rules, guidelines, guidance documents and/or administrative procedures to assist in the implementation and administration of M.G.L. c. 70B and 963 CMR 1.00 *et seq.*

(6) The Authority shall not distribute any grant amounts in excess of the limitations established in M.G.L. c. 70B §7.

1.02 Definitions

As used in 963 CMR 1.00 *et seq.*, the following terms shall have the meanings set forth in M.G.L. c. 70B, as most recently amended:

Alternatives to Construction
Total Facilities Grant

For the purposes of 963 CMR 1.00 *et seq.*, the following terms shall have the meaning set forth, unless the context clearly requires otherwise.

"Act," means St. 2004, c. 208, as it may be amended from time to time.

"Application," means a series of documents, forms, letters, statements, certifications, plans, studies, drawings, and other data and information required by the Authority to be submitted within the deadlines and in the format prescribed by the Authority. The Application may include at the discretion of the Authority, but not be limited to, the Statement of Interest, Initial Compliance Certification, Compliance Statement, Design and Educational Program, Budget Statement for Educational Objectives, Educational Facility Master Plan, Facility Assessment, Feasibility Study, Project Scope and Budget Agreement, copies of the vote of the Board of the Authority, copies of the certified local approval in the format prescribed by the Authority, an executed Project Funding Agreement, the letter of project approval from the Authority and any other documents, forms, letters, statements, certifications, plans, studies, drawings, data or other information as required by the Authority.

"Approved Project," means a Project for a municipally owned school facility that has completed all phases of the Application process to the satisfaction of the Authority, in the sole discretion of the Authority, including the receipt of a vote of the Board of the Authority, as authorized by the Authority's by-laws, as may be amended from time to time, for project approval, a properly certified local vote for the Project in the format prescribed by the Authority, an executed Project Funding Agreement between the Eligible Applicant and the Authority, and a letter of project approval from the Authority. No Project shall be deemed an Approved Project prior to the receipt of a vote of the Board of the Authority, as authorized by the Authority's by-laws, as may be amended from time to time, for project approval, a properly certified local vote for the Project in the format prescribed by the Authority, an executed Project Funding Agreement between the Eligible Applicant and the Authority, and a letter of project approval from the Authority. The authorization of an Approved Project may be rescinded by the Authority in accordance with these regulations and M.G.L. c. 70B.

"Assisted Facility," means a school facility that has received a Total Facilities Grant pursuant to G.L. c. 70B, chapter 645 of the Acts of 1948, or chapters 208 and 210 of the Acts of 2004.

“Audit,” means an examination by the Authority or its designee of Audit Materials as shall be submitted in a form or manner as prescribed by the Authority to determine the eligible, Approved Project cost pursuant to the “MSBA Audit Guidelines.”

“Audit Materials,” means all papers, invoices, votes, contracts, agreements, change orders, purchase orders, financing information, bonding schedules and other documents related to an Approved Project and any other documents or information that may be requested or required by the Authority.

“Authority,” means the Massachusetts School Building Authority, established by M.G.L. c. 70B and St. 2004, c. 208, and, where the context requires the Authority’s officers and staff exercising functions and powers.

“Board,” means the Board of Directors of the Massachusetts School Building Authority

“Construction Documents,” means the agreements, contracts, and other documents, including, but not limited to, the Owner-Contractor Agreement, Advertisement, Instructions to Bidders, Bidding Documents, Contract Forms, Conditions of the Contract, Specifications, Drawings, all addenda issued prior to execution of the Contract, and other documents listed in the Agreement and Modifications issued after execution of the Contract, executed by and between an Eligible Applicant, the Architect, the Contractor, the Sub-Contractors, or any other parties that set forth the terms, conditions, requirements, and specifications for the design and construction of the Project. The Construction Documents shall also at all times include a current construction schedule, a current project budget, and a current cash flow projection.

“Design and Educational Program,” means a numerical and written description of a specific educational program for a specified number of students over a specified period of time, in a format prescribed by the Authority, together with an itemization of spaces needed to support the educational program, complete to the degree that an architect may use it as the basic document from which to create the design of a school facility. A Design and Educational Program shall include, but not be limited to, the instructional programs, grade configuration, type of facility, the spatial relationships for the functions housed at the facility, the number of students, a list of any specialized classrooms or major support areas, non-instructional support areas, or external activity spaces, gross and net square footage of any affected existing facility, the overall security and security measures taken to safeguard the facility and its occupants, the school administrative organization, the hours of operation that include the instructional day, extracurricular activities, and any public access or community use. The Design and Educational Program shall begin with a thorough, in-depth explanation of curriculum goals and instructional activities that occur within the learning environment. The Design and Educational Program shall comply with the applicable law and applicable Department of Education regulations relative to curriculum, program, student learning time and length of school year. A Design and Educational Program shall include an itemization of each functional space and determination of square footage allocations to determining total building square footage and establish a realistic construction budget, as determined by the Authority.

“Budget Statement for Educational Objectives,” means the statement that shall include, but not be limited to, the following: an explanation of the Eligible Applicant’s curriculum goals for the District and the Project, school and grade configuration policies, class size policies, teaching philosophy and methods, curriculum delivery goals, a detailed description of program activities in order to determine functional need and ultimately the design of the building, a detailed listing of all sources and uses of funds used for the delivery of education by the Eligible Applicant in the current fiscal year and for the previous three fiscal years, the projected sources and uses of funds related to the operating budget for the proposed educational program.

“Eligible Applicant,” means the chief executive official where prescribed by statute or charter of the city, town, regional school district or independent agricultural and technical school.

“Enrollment Projection,” means the enrollment projection developed by the Authority using the Authority’s enrollment projection model and shall not include incoming school choice students.

“Fiscal Year,” means the year beginning July 1st and ending the following June 30th, unless otherwise determined by the Authority.

“Green Schools Guidelines,” means the criteria established by the Authority in collaboration with the Massachusetts Technology Collaborative which shall provide the basis for the allocation of Energy Efficiency incentive percentage points described in 963 CMR 1.15.

“Initial Compliance Certification,” means the statement by which the Eligible Applicant certifies to the Authority that the Eligible Applicant has met or will meet the General Requirements for Eligible Applicants, that shall include, but not be limited to, the following: that the Eligible Applicant has met the General Requirements for Eligible Applicants; that the Eligible Applicant has provided the Authority with all Audit Materials for any Assisted Project requested by the Authority; that the Eligible Applicant has expended the minimum maintenance expenditure requirements pursuant to M.G.L. c.70B § 8; that the Eligible Applicant is current on any payments which it may owe the Authority; that the Project is not due to the negligence or lack of maintenance of the Eligible Applicant; that the Eligible Applicant shall use all standard forms, standard contract documents, standard contract language established by the Authority; that the Eligible Applicant agrees to the provisions of M.G.L. c.70B § 9(a), and that the Eligible Applicant shall comply and submit to the Authority any other certifications, statements, or forms which the Authority may develop from time to time.

“MSBA Educational Program Space Standards and Guidelines,” means the itemized listing of educational spaces and square footages that comprise a model program for an elementary school, middle school and high school, or other grade configurations developed by the Authority, based upon varying levels of enrollment as determined by the Authority. The gross square footages are inclusive of all spaces to be designed in an Approved Project.

“MSBA Audit Guidelines,” means the document issued by the Authority outlining the Audit procedures of the Authority.

“Project,” means any project for a municipally owned or leased school facility proposed by an Eligible Applicant, but not yet approved by the Authority, including, but not limited to, construction of a new school facility, addition to an existing school facility, renovation or refurbishment of an existing school facility, repair or replacement of any eligible part of a school facility.

“Project Funding Agreement,” means the contract between the Eligible Applicant and the Authority governing the relationship between the Eligible Applicant and the Authority during the process from design through construction and completion of an Approved Project. The Project Funding Agreement shall include but not be limited to, a description of project scope, the total project budget, the Total Facilities Grant, timeline for design, construction and completion of an Approved Project, requirements for requesting and receiving reimbursement from the Authority, and other certifications and documents as required by the Authority.

“Progress Payments,” means the process by which an Eligible Applicant for an Approved Project, after executing a Project Funding Agreement, shall on a monthly basis or at such other times as may be required by the Authority, submit project costs that have been incurred by the Eligible Applicant to the Authority on standard request for reimbursement forms as prescribed by the Authority. The Authority may review properly submitted forms and reimburse the Eligible Applicant for the amount approved by the Authority within 15 days, less any adjustments made by the Authority through the Audit process. The Authority reserves the right to adjust any current or subsequent request for reimbursement to account for ineligible costs or other adjustments as determined by the Authority.

“Statement of Interest,” means the form used by an Eligible Applicant to submit to the Authority stating what the Eligible Applicant believes are the deficiencies in said Eligible Applicant’s respective school facilities that meet one or more of the statutory priorities set forth in M.G. L. c. 70B § 8. A Statement of Interest shall be approved by a vote of the applicable local governing body or bodies as set forth and in a form prescribed by the Authority.

1.03: General Requirements for Eligible Applicants

To achieve the effective planning, management and financial sustainability of a grant program to partially fund the construction, renovation, addition or repair of municipally-owned school facilities located in cities, towns and regional school districts, the Authority hereby sets forth the minimum requirements which shall be met, the standards which shall be applied, and the procedures which shall be followed in the application for, and awarding of, Authority school building grants. Any proposed Project must meet the criteria set forth for projects pursuant to M.G.L. c. 70B including §§ 6 (a) (1 through 6 inclusive), 8 and 9(a).

Any Project, for which a Total Facilities Grant is sought from the Authority by an Eligible Applicant, shall certify through the Authority’s Initial Compliance Certification that the following requirements have been or will be met.

(a) The Eligible Applicant shall certify to the Authority that the Commonwealth’s interests in partially funding a municipally-owned public school construction project will be safeguarded.

(b) Any Project for the construction of a new school facility, or for the addition to or major renovation of an existing school facility for which an Eligible Applicant is seeking partial funding from the Authority shall have an anticipated useful life of at least 50 years as a public school of the Eligible Applicant’s school district.

(c) The Eligible Applicant has submitted all Audit Materials that have been requested by the Authority, has a signed Project Funding Agreement for any other Assisted Facility or Approved Project as requested by the Authority, and that the Eligible Applicant is current on any payments which it may owe to the Authority.

(d) The Eligible Applicant is not submitting a Statement of Interest or an Application that is a result of lack of maintenance or negligence caused by the Eligible Applicant.

(e) All Projects shall be designed to minimize vandalism, and materials and furnishings shall be selected to minimize vandalism.

(f) All Projects shall provide for equality of educational opportunity without discrimination on account of sex, race, color, religion, sexual orientation or national origin, and shall meet the requirements of M.G.L. c. 76, §5 and regulations made thereunder.

(g) All Projects shall comply with all applicable provisions of federal, state, and local law relative to the accessibility of programs and facilities to persons with disabilities.

(h) All Projects shall have undergone review, in accordance with applicable state law and regulations, to the extent applicable to the Project, by the Massachusetts Historical Commission, the Massachusetts Commission Against Discrimination, the Secretary of Environmental Affairs, the Architectural Access Board, and any other department or agency of the Commonwealth required by law to review such Projects. The Eligible

Applicant shall provide to the Authority written documentation of the reviews conducted herein in such detail and in such format as the Authority shall require.

(i) All Projects shall have undergone review, in accordance with applicable local or district charters, by-laws, ordinances or regulations, including local conservation, fire prevention, water, sewer or building code requirements. The Eligible Applicant shall provide to the Authority written documentation of the reviews conducted herein in such detail and in such format as the Authority shall require.

(j) All Eligible Applicants shall demonstrate that they have identified any collaborative programs in the school district not currently housed in public school facilities, and have reviewed any such programs to determine if students in such programs can be better served in the Project.

(k) All Eligible Applicants are responsible for the administration and success of an Approved Project, and the provision of a grant, if any, by the Authority shall not in any way be deemed to imply that the Authority shall have any responsibility for the administration or success of the Approved Project. Although Eligible Applicants are encouraged to seek the advice and opinion of the Authority on issues that may arise regarding the Approved Project, advice provided by the Authority shall not transfer the responsibility for final decisions from Eligible Applicant to the Authority, nor render the Authority responsible for any such advice. Total Facilities Grants awarded by the Authority pursuant to M.G.L. c. 70B and 963 CMR 1.00 *et seq.*, if any, shall be used in conformance with M.G.L. c. 70B and the Act, the provisions of the Project Funding Agreement and any other documents, contracts, forms, statements, certifications or other documents required by the Authority, to achieve the grant objectives and to insure that the purposes set forth in M.G.L. c. 70B and 963 CMR 1.00 *et seq.* are fully executed.

(l) All Eligible Applicants must submit documentation supporting the anticipated impact on operating costs of implementing the Project in such detail and format as required by the Authority, including but not limited to, an estimate of the costs of additional maintenance spending required of the Eligible Applicant, the costs of additional instructional or support staff spending, additional utility costs, the costs of additional transportation, if any, and the estimated revenue, if any, from the sale or lease of any school facility decommissioned as a result of implementing the Project.

(m) All Eligible Applicants shall use the standard forms, standard contracts, standard clauses for contracts, and any other standard forms, contracts or other language as developed by the Authority and as may be updated from time to time by the Authority.

(n) All Eligible Applicants shall ensure that any parties procured and contracted by them to perform work on an Approved Project are in compliance with M.G.L. c. 268A, whenever applicable.

1.04: General Site and School Construction Standards

The Eligible Applicant must ensure that an Approved Project, including those for the expansion or renovation of an existing building, shall meet all applicable federal, state, local and regional building code requirements. The Authority bears no responsibility for an Eligible Applicant's failure to comply with said requirements.

1. Design and Construction Standards: General

Projects shall reflect cost-effective design, material, and finish decisions consistent with good architecture and engineering practice, high quality construction, and the requirements of the Authority.

Projects shall reflect attention to current technological practices for students, faculty, and school staff.

The Authority prohibits an Eligible Applicant from utilizing chlorofluorocarbon-based (CFC) refrigerants in any new system for building heating, ventilating, air conditioning, or refrigeration.

All new construction and major reconstruction projects shall meet applicable local ordinances for recycling space and provide space within the building that is dedicated to the separation, collection, and storage of materials for recycling, including, at a minimum, paper (white ledger and mixed), cardboard, glass, plastics, aluminum cans, and metals.

New construction shall, whenever possible, be oriented on the site in order for the building to maximize natural daylight for classroom spaces.

The Authority may issue minimum and maximum guidelines and standards for the sustainability of Approved Projects, including the development of school building design guidelines which shall provide guidelines for design, energy efficiency, materials, finishes, life cycle cost analysis, and systems selections.

All capital construction projects shall have a project identification sign on the construction site during the period of construction. Said sign shall be at least four feet by eight feet in size, shall be visible from the primary roadway adjoining the site, and shall include the following: "This project funded in part by the Massachusetts School Building Authority."

2. Design and Construction Standards: Indoor Air Quality

An Eligible Applicant should, to the extent that the following indoor air quality requirements apply to an Approved Project, as determined by the Authority, meet the guidelines established in the MSBA Indoor Air Quality guidelines.

1.05 Site Standards

The site of an Approved Project shall be owned by the Eligible Applicant, or be under control of the school district or Eligible Applicant pursuant to a lease which assures the Eligible Applicant exclusive jurisdiction and control of the land for the anticipated useful life of the Approved Project to be constructed thereon.

The site selected shall be chosen on the basis that it will meet the educational need, maximize the use of any available community resources, and minimize any possible adverse educational, environmental, social, or economical impact upon the community. Such adverse impact shall include, but not be limited to: the need to provide new sewers, roads, transportation facilities, water supply, water connections, and other public infrastructure to the site; existence of soil conditions which may cause site development costs to be greatly increased; or curtailment of the approved educational program.

The site selected shall be proximate to other facilities such as libraries, museums, parks, natural resources, nature study areas, and businesses, which would enhance the proposed educational program.

The site shall be free from noxious pollution or contamination, and should be selected to avoid flood plain, wetlands or other environmentally sensitive areas. A new school site should not be located within one thousand feet of an active landfill.

The site shall be located to serve efficiently and safely the school population it is intended to serve, and should be of sufficient size to accommodate the building and planned future additions thereto, the agreed upon outdoor educational program, needed parking areas, bus turnarounds, delivery areas, required setbacks and planned aesthetics.

Exterior grades shall slope away from the building and the building foundation to adequately drain away rain water, snow melt, and HVAC condensate and to prevent ponding, pooling or otherwise saturating the building envelope or foundation. Rain leaders, or downspouts, shall be directed to infiltration structures, on-site storage, rain gardens, or daylight, provided that surface drainage moves water well away from the building and does not result in unintended ponding or pooling.

1.06: Educational Program Space Standards

1. General Provisions

The approved Design and Educational Program shall be the basis for the design of an Approved Project and shall not diverge from said program without the written consent of the Authority.

2. Planned Enrollment

The Enrollment Projection, as determined by the Authority.

3. Prototypical Gross Square Foot Per Pupil Standards

The Authority shall annually review a set of educational program space standards, MSBA Educational Program Space Standards and Guidelines, which provide the basis for gross square foot per pupil allowances promulgated under 963 CMR 1.00 *et seq.* Pursuant to M.G.L. c70B §9(b), the MSBA Educational Program Space Standards and Guidelines, shall define prototype school design and space recommendations for each specified program activity eligible for funding from the Authority.

4. Per Student Space Allowance

The Authority shall not authorize design plans that exceed gross square foot per student allocations based upon the Enrollment Projection of the Approved Project and the limitations in gross square footage established Tables 1, 2 and 3 herein, except as provided herein. These standards are reflective of realistic, future-oriented, and contemporary educational program goals and are based on the summation of square foot allocations for each itemized educational space. The gross square footage per student allowances promulgated herein are based upon the MSBA Educational Program Space Standards and Guidelines which is based upon model educational programs for facilities of smaller and larger enrollments in order to develop a variable gross square foot per student allowance that accommodates the differing needs and economies of scale in facilities of smaller and larger enrollments.

Table 1: Gross Square Feet per Student – Elementary Schools

Projected Enrollment	GSF per Student	Projected Enrollment	GSF per Student
Less than 300	180	Between 450 and 459	163
Between 300 and 309	180	Between 460 and 469	161
Between 310 and 319	179	Between 470 and 479	160
Between 320 and 329	178	Between 480 and 489	159
Between 330 and 339	177	Between 490 and 499	158
Between 340 and 349	175	Between 500 and 509	157
Between 350 and 359	174	Between 510 and 519	156
Between 360 and 369	173	Between 520 and 529	154
Between 370 and 379	172	Between 530 and 539	153
Between 380 and 389	171	Between 540 and 549	152
Between 390 and 399	170	Between 550 and 559	151
Between 400 and 409	168	Between 560 and 569	150
Between 410 and 419	167	Between 570 and 579	149
Between 420 and 429	166	Between 580 and 589	147
Between 430 and 439	165	Between 590 and 599	146
Between 440 and 449	164	600 and greater	145

Table 2: Gross Square Feet per Student – Middle and Junior High Schools

Projected Enrollment	GSF per Student	Projected Enrollment	GSF per Student
Less than 400	190	Between 580 and 589	175
Between 400 and 409	190	Between 590 and 599	174
Between 410 and 419	189	Between 600 and 609	173
Between 420 and 429	188	Between 610 and 619	172
Between 430 and 439	187	Between 620 and 629	171
Between 440 and 449	187	Between 630 and 639	170
Between 450 and 459	186	Between 640 and 649	169
Between 460 and 469	185	Between 650 and 659	169
Between 470 and 479	184	Between 660 and 669	168
Between 480 and 489	183	Between 670 and 679	167
Between 490 and 499	182	Between 680 and 689	166
Between 500 and 509	181	Between 690 and 699	165
Between 510 and 519	181	Between 700 and 709	164
Between 520 and 529	180	Between 710 and 719	163
Between 530 and 539	179	Between 720 and 729	163
Between 540 and 549	178	Between 730 and 739	162
Between 550 and 559	177	Between 740 and 749	161
Between 560 and 569	176	750 and greater	160
Between 570 and 579	175		

Table 3: Gross Square Feet per Student – Academic High Schools

Projected Enrollment	GSF per Student	Projected Enrollment	GSF per Student
Less than 600	205	Between 800 and 809	195
Between 600 and 609	205	Between 810 and 819	195
Between 610 and 619	205	Between 820 and 829	194
Between 620 and 629	204	Between 830 and 839	194
Between 630 and 639	204	Between 840 and 849	193
Between 640 and 649	203	Between 850 and 859	193
Between 650 and 659	203	Between 860 and 869	192
Between 660 and 669	202	Between 870 and 879	192
Between 670 and 679	202	Between 880 and 889	191
Between 680 and 689	201	Between 890 and 899	191
Between 690 and 699	201	Between 900 and 909	190
Between 700 and 709	200	Between 910 and 919	190
Between 710 and 719	200	Between 920 and 929	189
Between 720 and 729	199	Between 930 and 939	189
Between 730 and 739	199	Between 940 and 949	188
Between 740 and 749	198	Between 950 and 959	188
Between 750 and 759	198	Between 960 and 969	187
Between 760 and 769	197	Between 970 and 979	187
Between 770 and 779	197	Between 980 and 989	186
Between 780 and 789	196	Between 990 and 999	186
Between 790 and 799	196	1000 and greater	185

5. Vocational Technical Schools

Vocational Technical Schools and the Vocational Educational Space components of Comprehensive High schools shall not exceed 225 gross square feet per pupil and any additional programmatic requirements may be considered on a case-by-case basis by the Authority in conformity with M.G.L. c.74 requirements and a comparison of existing school facilities with similar vocational program requirements.

6. Special Education Spaces

Spaces for special education classes/programs may receive special consideration at the discretion of the Authority. The gross square feet per student defined herein includes a baseline assumption that 8% of the total planned enrollment will be enrolled in separated special education programs. Notwithstanding the gross square footage maximum standards established herein, additional space consideration may be given, at the sole discretion of the Authority, if the Eligible Applicant documents and certifies a greater need.

7. Space Allowance by Program Activity

The approved Design and Educational Program shall be within the limitations as set forth in the table below:

Pre-Kindergarten and Kindergarten (including self-contained lavatory)	1000 - 1400 net square feet
Core Classrooms	850 - 1100 net square feet
Science Lecture-Laboratory	1000 - 1400 net square feet

For all other spaces, the MSBA Educational Program Space Standards and Guidelines shall be followed in planning school facilities. Said Guidelines may also provide school designers and school building committees with prototype building programs for elementary, middle, and high schools, and other grade configurations as determined by the Authority. The Eligible Applicant may make reasonable departures from the MSBA Educational Program Space Standards and Guidelines with a prior written determination of the Authority, at their sole discretion, that such departures are consistent with the intent of 963 CMR 1.00 *et seq.* to provide adequate, safe, cost effective and programmatically sound school facilities.

1.07 Cost Standards

The Authority shall develop construction and soft cost standards which shall be based upon the cost experience of recently completed and recently bid school projects, taking into account the cost effectiveness of design, construction and programming techniques utilized in such school projects. For the purposes of developing cost standards, the Authority shall, pursuant to M.G.L. c.70B §9(b), develop cost standards for prototypical school components, as outlined in the MSBA Educational Program Space Standards and Guidelines.

The cost standards may be developed based on Massachusetts regional construction costs reflective of the geographic diversity of the Commonwealth.

A Project for which the estimated total budget is less than \$250,000, as determined by the Authority, shall not be deemed an Approved Project and the Authority shall have no obligation to provide a review of any Application materials for said Project and any Application materials submitted by the Eligible Applicant shall not warrant further consideration.

For the purposes of calculating a total project budget for an Approved Project, cost standards developed pursuant to M.G.L. c.70B § 9(b) shall be applied to the product of (1) the Enrollment Projection, as determined by the Authority and (2) the gross square footage per student, as defined by the Authority in 963 CMR 1.00 *et seq.*

The Eligible soft cost components as a percentage of total construction costs should not exceed 20% of the general construction costs, as determined by the Authority pursuant to the MSBA Construction Cost Guidelines.

Basic architectural services shall include the following: architectural drawings, mechanical, electrical, plumbing, fire protection, structural, site development, basic environmental permitting, graphics, lighting design, acoustics, data and communication, educational consultants, any specialty consultants for laboratory, library/media center and kitchen space, code consultants, accessibility, and other services established pursuant to the MSBA standard

Architectural/Engineering Contract. Additional architectural services may include: geotechnical consultants, asbestos consulting, wetlands flagging, and other additional services as determined by the Authority.

The provisions of 963 CMR 1.00 *et seq.* shall not be deemed to preclude an Eligible Applicant from including in an Approved Project, in addition to the Design and Educational Program as approved by the Authority, such additional facilities as said Eligible Applicant may desire. Any and all costs related to said additional facilities, including but not limited to, the design, construction and implementation of said additional facilities, shall be the sole responsibility of the Eligible Applicant.

Project elements that exceed or diverge from the project scope detailed in the Project Scope and Budget Agreement are categorically ineligible to receive funding from the Authority. The Eligible Applicant may retain such elements only by accepting sole financial responsibility for them in writing in a format prescribed by the Authority, prior to said Eligible Applicant including such elements in any designs.

When a facility is to be acquired as part of an Approved Project, the value of such facility to be acquired by an Eligible Applicant shall be determined by the Authority in accordance with the provisions of M.G.L. c.30B on the basis of the reports of at least two fee appraisers registered with the Attorney General and retained by the Eligible Applicant. The final approved cost of combined facility acquisition, renovation and conversion work shall not exceed the equivalent costs in new construction.

1.08 Major Reconstruction, Partial Renovation and Repair Projects

Major reconstruction, partial renovation and repair projects shall be considered by the Authority pursuant to the Application process promulgated in 963 CMR 1.00 *et seq.*

Any Approved Project for the major reconstruction, partial renovation, or repair of an existing school facility shall be subject to a determination by the Authority that such repairs and renovations have a life-cycle cost analysis that demonstrates the cost-effectiveness and useful life of said major reconstruction, partial renovation or repair.

Except where otherwise prescribed by any statute, regulation or code, an Approved Project for the major reconstruction or partial renovation of educational spaces in school facilities appropriately constructed in accordance with the standards and guidelines that prevailed at the time of construction shall not necessarily require compliance with the educational space standards promulgated in 963 CMR 1.00, *et seq.* at the discretion of the Authority.

1.09: Application and Approval Procedures

No complete Application shall be accepted prior to July 1, 2007.

1. Application Approval

The Authority shall approve Applications in accordance with the regulations established herein and the priority criteria established in M.G. L. c.70B, including but not limited to, §§ 6, 8, and 9(a). The Authority shall reserve the right to rescind Approval of a Project if the Eligible Applicant does not comply with the statutes, regulations, guidelines and/or policies of the Authority.

2. Statement of Interest Process

To be considered by the Authority in any fiscal year for approval of a Total Facilities Grant, an Eligible Applicant must submit a Statement of Interest, in the format developed by the Authority, to the Authority by no later than July 31 of the Fiscal Year in which funding is being requested, unless otherwise agreed in writing prior to said July 31 date by the Authority. Any Statement of Interest which is received after July 31 may be considered by the Authority for funding in a subsequent Fiscal Year. The submission of a Statement of Interest in no way commits the Authority to accept any further Application materials, approve an Application, provide a grant or any other type of funding, or places any other obligation or requirement upon the Authority. The Authority expects that the Statement of Interest can be completed at no cost to the Eligible Applicant, and any costs incurred by an Eligible Applicant in connection with completing and submitting a Statement of Interest to the Authority shall not be eligible for reimbursement by the Authority and shall be borne by the Eligible Applicant. Design documents, plans, schematics or drawings will not be accepted by the Authority with any Statement of Interest submission to the Authority.

No Statement of Interest shall be considered by the Authority unless said Statement of Interest has been submitted in compliance with the provisions stated therein, including an approval by a vote of the appropriate governing bodies of the Eligible Applicant, which in the case of a regional school district shall be the regional school committee.

The Authority shall review Statements of Interest pursuant to the priority criteria established by to M.G. L. c.70B, including but not limited to §§ 6, 8, and 9(a). The Authority shall review all properly submitted Statements of Interest in the context of the Authority's Enrollment Projections for the Eligible Applicant, general building condition data collected by the Authority and any other information or data as the Authority may deem to be necessary for review.

No Statement of Interest shall be considered by the Authority for the purposes of student overcrowding if the Authority determines in its sole discretion that such overcrowding is the result of district student assignment policies which created such overcrowding or district operational budget constraints which caused the vacancy of classrooms or the overcrowding of classrooms due to personnel reductions.

3. Initial Compliance Certification Process

The Authority shall not consider an Application if an Initial Compliance Certification has not been properly submitted to the Authority by the Eligible Applicant.

After the Statement of Interest has been properly submitted to the Authority, an Eligible Applicant shall certify and submit a completed Initial Compliance Certification, in the format developed by the Authority, that the Applicant complies and will comply with the provisions of the rules, regulations, policies and procedures of the Authority.

Any Eligible Applicant seeking funding from the Authority which has, prior to submitting any part of an Application to the Authority, sold, leased or otherwise removed from service any schoolhouse operated by said Eligible Applicant shall be eligible for such grant only if the Authority determines that the grant is not for the purpose of replacing a schoolhouse sold, leased, or otherwise removed from service in the past ten years or that the need for the project covered by the grant could not have reasonably been anticipated at the time that such schoolhouse was sold, leased, or otherwise removed from service pursuant to M.G.L. c. 70B, §15 (c).

Pursuant to M.G.L. c.70B §8, the Authority shall not approve any project for any school district that fails to spend in the year preceding the year of application at least 50 percent of the sum of said school district's calculated foundation budget amounts for the purposes of foundation utility

and ordinary maintenance expenses, and extraordinary maintenance allotment as defined in M.G.L. c.70, for said purposes. From fiscal year 1999 forward, no school district shall be approved for a project nor receive school facilities funds unless said district has spent at least 50 percent of the sum of said district's calculated foundation budget amounts in each of the fiscal years including and succeeding fiscal year 1999.

4. Authority Review of Statement of Interest and Initial Compliance Certification

The Authority shall notify Eligible Applicants whose properly submitted Statements of Interest and Initial Compliance Certifications are deemed to merit further consideration in continuing the Application process. The Authority will notify an Eligible Applicant if the Authority determines that the Statement of Interest submitted by an Eligible Applicant has not met the criteria established pursuant to M.G. L. c.70B, including but not limited to §§ 6, 8, and 9(a).

The Authority shall not accept an Application or approve funding for any Project from an Eligible Applicant that, in the reasonable judgment of the Authority, is the result of negligence or a lack of routine maintenance.

5. School Building Committee

Unless otherwise prescribed by statute, after the Authority's review of the Statement of Interest and Initial Compliance Certification, the Eligible Applicant shall formulate a school building committee for the purpose of generally monitoring the Application process and to provide input to the Eligible Applicant in the course of any Approved Project construction.

Such school building committee shall be formed in accordance with the provisions of the Eligible Applicant's local charter and/or by-laws and shall include at least the following: the local chief executive officer of the Eligible Applicant, or, in the case of a town whose local chief executive officer is a multi-party body, said body shall elect one of its members to serve on the school building committee; the administrator or manager of a city or a town where applicable, at least one member of the school committee, as required by M.G.L. c.71, §68; the superintendent of schools; the local official responsible for building maintenance; a representative of the office or body authorized by law to construct school buildings in that municipality, the school principal from the subject school; a member who has knowledge of the educational mission and function of the facility; a local budget official or member of the local finance committee; at least three members of the community with architecture, engineering and/or construction experience to provide input relative to the effect of the project on the community and to examine building design and construction in terms of its constructability.

The Authority shall approve the composition and role of the school building committee. The Authority may from time to time hold "best practices" information sessions at varying geographic locations in the Commonwealth for the purposes of keeping school building committees up to date on regulatory and policy activities of the Authority.

6. Design and Educational Program and Budget Statement for Educational Objectives

Once the Authority determines that the Statement of Interest has been deemed to merit further consideration, the Authority may request that an Eligible Applicant submit a Design and Educational Program and Budget Statement for Educational Objectives, in the format prescribed by the Authority. The Eligible Applicant shall outline the specific educational program goals for a Project and how the Eligible Applicant proposes to align those goals with the operating budget for the District and Project.

The following spaces shall be categorically ineligible for Authority funding and shall not be contained within an approved Design and Educational Program: swimming pools, skating rinks, field houses (only to the same extent as gymnasias), district administrative office space, and indoor tennis courts, and other spaces which may be determined ineligible by the Authority.

The Design and Educational Program shall be subject to the approval of the Authority. The Authority may provide, when in the discretion of the Authority it is necessary, technical assistance to the Eligible Applicant with the development of the Design and Educational Program elements. The Authority shall review the Budget Statement for Educational Objectives in the context of the Design and Educational Program, and the Authority may consult the Division of Local Services at the Department of Revenue.

After approval of the Design and Educational Program by the Authority, the Eligible Applicant shall certify to the Authority, in the manner prescribed by the Authority, that the local school committee has voted to approve the Design and Educational Program in a manner prescribed by the Authority.

7. Educational Facilities Master Plan

An Eligible Applicant shall have a current educational facilities master plan that includes both a long term and a short term plan for facilities and an updated building inventory, in accordance with the Educational Facility Master Plan guidelines established by the Authority.

Once the Authority determines that the Statement of Interest has been deemed to merit further consideration, the Authority may request that an Eligible Applicant submit an educational facilities master plan, as defined and in the format prescribed by the Authority.

8. Preliminary Project Scope and Budget Meeting

Once an Eligible Applicant has properly submitted the Statement of Interest, the Initial Compliance Certification, the Design and Educational Program and Budget Statement for Educational Objectives, a copy of the Educational Facilities Master Plan, and any other materials which the Authority may require, the Authority and the Eligible Applicant shall meet jointly to discuss the facility deficiencies as identified by the Eligible Applicant in the Statement of Interest and to discuss any further action in which the Authority may participate. The Preliminary Project Scope and Budget meeting may be attended by representatives of the Eligible Applicant including, but not limited to: one or more representatives of the school committee; one or more members of the building committee, where applicable, a representative of the office or body authorized by law to construct school buildings in that city, the superintendent of schools or his designee, other local officials or representatives at the discretion of the Authority.

After such meeting, the Authority may determine that the Application does not warrant further consideration at that time, pursuant to the priority criteria established in M.G. L. c.70B, including but not limited to §§6, 8, and 9(a).

In the event that the Authority determines further action in the Application process may be warranted, the Authority shall review and approve the Design and Educational Program in the context of the information provided to the Authority about the operating budget and educational facilities master plan.

9. Facilities Assessment

After the Preliminary Project Scope and Budget Meeting, the Authority may determine that a Facilities Assessment is necessary to understand the extent of deficiencies outlined in the

Statement of Interest. The Authority, in cooperation with the Eligible Applicant, may conduct a Facilities Assessment of the facility addressed in the Statement of Interest form or any facilities relevant to the facility addressed in the Statement of Interest form.

The Facilities Assessment, if any, shall be conducted by the Authority in a format and manner prescribed by the Authority and the Authority shall pay for the costs of conducting such Facilities Assessment, provided that the Eligible Applicant fully cooperates with the Authority in conducting such Facilities Assessment. The Eligible Applicant shall provide complete access to its school facilities for purposes of conducting a Facilities Assessment. In the event that the Eligible Applicant does not cooperate with the Authority in conducting a Facilities Assessment, which, in the reasonable judgment of the Authority results in a delay of the Facilities Assessment, the Authority may decline further consideration of the Eligible Applicant's Application or deduct a portion or all of the cost of the Facilities Assessment from any Total Facilities Grant for which the Eligible Applicant may receive approval from the Authority.

The Facilities Assessment shall include an assessment of the Eligible Applicant's maintenance process and a review of the maintenance procedures in place at the school and district level. Such a maintenance review shall be conducted in a format and manner prescribed by the Authority and the information collected at this time shall be used as part of the assessment of incentive percentage points for maintenance ratings, if any, that may be made available by the Authority to an Eligible Applicant pursuant to M.G.L c.70B §10.

If the Authority procures a professional firm to conduct the Facilities Assessment, said firm shall be prohibited from bidding on or being procured by the Eligible Applicant for any design, architectural, project management or other service for the Eligible Applicant for any Project that may receive approval from the Authority, if any, as a result of the Application.

At the conclusion of such Assessment, the Authority may determine that the Application does not warrant further consideration at that time, pursuant to the priority criteria established in M.G. L. c.70B, including but not limited to §§ 6, 8, and 9(a).

10. Feasibility Study

The Authority may determine that a Feasibility Study is necessary to understand the extent of deficiencies identified in the Statement of Interest or the Facility Assessment, if one was performed, and to begin to formulate a solution to those deficiencies as outlined in the Eligible Applicants' Statement of Interest. The Authority, in cooperation with the Eligible Applicant, may conduct a Feasibility Study of the facility addressed in the Statement of Interest and/or any other facilities relevant to the facility addressed in the Statement of Interest. The Design and Educational Program reviewed and approved by the Authority in the Preliminary Project Budget and Scope conference shall, in part, provide the criteria for the initial program scope for the Feasibility Study.

The Feasibility Study shall be conducted by the Authority in a format and manner prescribed by the Authority and the Authority shall pay for the costs of conducting such Feasibility Study, provided that the Eligible Applicant fully cooperates with the Authority in conducting such Feasibility Study. The Eligible Applicant shall provide complete access to its school facilities for purposes of conducting a Feasibility Study. In the event that the Eligible Applicant does not cooperate with the Authority in conducting a Feasibility Study, which, in the reasonable judgment of the Authority results in a delay of results in a delay of the Feasibility Study the Authority may decline further consideration of the Eligible Applicant's Application or deduct a portion or all of the cost of the Facilities Assessment from any Total Facilities Grant which the Eligible Applicant may receive approval from the Authority.

The purpose of the Feasibility Study is to investigate potential options and solutions for the deficiencies identified in the Facility Assessment, if any assessment was performed, and in the properly submitted Statement of Interest by an Eligible Applicant. The Feasibility Study shall be conducted at the direction and discretion of the Authority to evaluate potential options and solutions for the deficiencies identified in the Facility Assessment, if any assessment was performed, and the Statement of Interest, and to determine the cost estimates of the potential options or solutions.

The Feasibility Study shall examine and identify all potential alternatives to construction or renovation of a facility, and may include, but not be limited to, an analysis of school district student school assignment practices, the utilization of under-utilized or vacant facilities potentially available for the proposed use for the Project, the lease of adequate space that could be readily adapted for educational use, the use of regionalizing or tuitioning-out agreements for the provision of educational services. The Feasibility Study shall include a review of any appropriate non-construction alternatives, whether or not such alternatives are eligible for Authority reimbursement.

The Feasibility Study shall include an analysis of a District's operating budget and the ability of a District to support the operating costs of any proposed Project, including the increased costs of instructional, utilities, maintenance and transportation support, which may be in addition to costs already being incurred.

Said Study may include, but not be limited to, the following: an analysis of available space in other schools in the district, tuition agreements with adjacent school districts pursuant to M.G.L. c.70B §8; the rental or acquisition of existing buildings that could be made available for school use pursuant to M.G.L. c.70B §8; a detailed and itemized cost estimate of addressing facility deficiencies, including an estimate for both a renovation and new construction; an evaluation of the environmental and cost impact of construction phasing on students and staff occupying a renovated building, and any relocation options or off-hour construction that may be required; and an evaluation of the existing conditions at no more than three sites, unless otherwise determined by the Authority, that may include a geotechnical evaluation and soils exploration, a Phase I Initial Site Investigation conforming to 310 CMR 40.00, *et seq.* performed by a licensed site professional. Unless otherwise required by law or regulation, the Authority may direct, at its sole discretion, subsequent environmental testing be performed at a site agreed upon by the Authority and the Eligible Applicant. Said subsequent environmental testing shall, when required or appropriate, include the regulatory authority or authorities having jurisdiction or be in accordance with the requirements of said appropriate regulatory authority or authorities. The Authority shall require the Eligible Applicant to share in any costs associated with the Feasibility Study, that the Authority determines to be extraordinary or beyond customary costs. The Authority may require the Eligible Applicant to fully fund certain environmental or geotechnical site testing costs beyond initial investigatory costs.

The Authority shall provide the Eligible Applicant with the results of such environmental assessment or assessments, if any, which the Eligible Applicant shall make available for public review and shall provide a reasonable opportunity for public comment thereon. The Eligible Applicant shall submit to the Authority a summary of the public comments, in a format determined by the Authority, prior to the Final Scope and Budget Conference.

The Authority shall bear no responsibility for the results of any such Study, nor for any site remediation, clean-up or other site remediation services.

If the Authority procures a professional firm to conduct the Feasibility Study, said firm shall be prohibited from bidding on or being procured by the Eligible Applicant for any design, architectural, project management or other service for the Eligible Applicant for any Project that may receive approval from the Authority, if any, as a result of the Application.

At the conclusion of such Study, the Authority may determine that the Application does not warrant further consideration at that time, pursuant to the priority criteria established in M.G. L. c.70B, including but not limited to §§ 6, 8, and 9(a).

11. Project Scope, Cost and Scheduling

The Feasibility Study report may include, but shall not be limited to, a detailed scope of the Project, conceptual architectural and site drawings as required to convey a successful organization of spaces that will satisfy the special and organizational requirements of the approved Design and Educational Program, an outline of the major building construction systems which is proposed for the Project, a budget cost estimate using the Uniformat II Elemental Classification format (Level 3) in as much detail as determined by the Authority, permitting requirements, a proposed Project design and construction schedule including consideration of phasing of the Project, sustainable design goals including minimization of environmental and transportation impacts, and ways the Project can meet those goals, and elements of construction or demolition waste that would be recyclable.

At the conclusion of such Study, the Authority may determine that the Application does not warrant further consideration at that time, pursuant to the priority criteria established in M.G. L. c.70B, including but not limited to §§ 6, 8, and 9(a).

12. Final Project Scope and Budget Conference

After completion of a Facilities Assessment, if any, and Feasibility Study, if authorized and conducted by the Authority, the Authority may invite the local chief executive officer, Chair and or members of the school committee, the Chair and or members of the school building committee, the superintendent of the Eligible Applicant's school district, a representative from the office or body that is authorized by law to construct a school building or undertake a school capital project in that city, town or regional school district, and other local officials as requested by the Authority, to meet with authorized representatives of the Authority to discuss proposed solutions to the issues identified through the Statement of Interest Form, verified by the Facilities Assessment, if any, and analyzed in the Feasibility Study. No Project shall receive approval or funding from the Authority unless a Final Project Scope and Budget Conference was held to the reasonable satisfaction of the Authority, unless the Authority determined that a Final Project Scope and Budget Conference was not necessary.

13. Project Scope and Budget Agreement

A Project Scope and Budget Agreement, as defined herein and in a format and manner prescribed by the Authority, shall be executed by the Eligible Applicant and the Authority. Such Agreement shall include, but not be limited to, the Authority specifying the remaining actions to be taken by the Authority including the date of an upcoming Board vote on the Project as detailed in the Project Scope and Budget Agreement and the identification of an initial minimum and maximum potential reimbursement rate from the Authority. Said Project Scope and Budget Agreement shall include the detailed Project scope, including the educational space requirements for the Project, an itemized cost estimate for the Project, detailed descriptions of the type of Project, a detailed description of the site of Project, a timeline for Project phasing from design through construction document development up to the acceptance of Project bids.

An estimated timeline from the bid date acceptances and a construction schedule through Project occupancy shall be agreed upon by the Eligible Applicant and the Authority.

After the execution of a Project Scope and Budget Agreement the Project will be submitted to the Board for approval. No Project will be presented to the Board unless the Authority and the Eligible Applicant have executed a Project Scope and Budget Agreement.

An executed Project Scope and Budget Agreement is valid for 90 days after the Agreement has been approved by a vote of the Board. During this 90 day period, the Eligible Applicant shall acquire and certify local approval for an appropriation and all other necessary local votes or approvals in the format prescribed by the Authority showing acceptance of the cost, site, type and scope, and timeline for the Project. If the timelines established by the Project Scope and Budget Agreement are not met by the Eligible Applicant, the Authority reserves the right to rescind the offer to the Eligible Applicant for the Project and the Eligible Applicant may reapply for the Project in a subsequent fiscal year.

14. Project Funding Agreement

After the Eligible Applicant has acquired local approval in the format prescribed by the Authority, the Eligible Applicant and the Authority shall execute a Project Funding Agreement within 14 days of said local approval. Eligible Applicants must document to the Authority the sources and amounts of local funding which will be committed for the Eligible Applicant's share of the Approved Project cost.

The Project Funding Agreement shall establish the Total Facilities Grant and scope of the Approved Project to be funded by said grant. The Authority shall not expend any funds for any costs in excess of the Total Facilities Grant established in the Project Funding Agreement. The Total Facilities Grant shall not include funding for categorically ineligible costs established pursuant to guidelines issued by the Authority, additions to scope beyond that agreed upon and outlined in the Project Scope and Budget Agreement, or other costs which the Authority deems to be ineligible.

Once the Project Funding Agreement has been executed, the Authority shall send a letter of project approval to the Eligible Applicant. The Eligible Applicant has 14 calendar days from the date of receipt in which to accept or reject the letter of project approval. If the Eligible Applicant takes no action within said 14 days, then the letter of approval shall be deemed rejected and the Project shall not be an Approved Project.

1.10: Design and Review Process

Once a letter of project approval has been accepted by the Eligible Applicant, the Eligible Applicant shall take the following steps:

1. Procurement of Owner's Project Manager

The Eligible Applicant shall procure the services of an Owner's Project Manager pursuant to the provisions of M.G.L. c.149 §44A 1/2 and the guidelines established by the Authority, and must use the standard contract form established by the Authority.

The Authority shall, in its sole discretion, approve or disapprove of the selection of the Owner's Project Manager. The Authority shall maintain evaluation data of Owner's Project Managers who have been approved by the Authority that have performed to the Authority's satisfaction on school projects.

2. Procurement of Architectural and Engineering Services

The Eligible Applicant shall procure the services of an architect pursuant to the provisions of M.G.L. c. 7 §38 A1/2 through O, and the guidelines established by the Authority, and must use the standard contract established by the Authority. The Authority shall maintain evaluation data of Architects that have performed to the Authority's satisfaction on school projects.

3. Authority Review of Project Plans

The Authority shall implement an architectural and technical peer review of each Approved Project at each of the schematic design, design development, and final design phases, or at such other times determined by the Authority. Such a review shall ensure that the designs comply with the approved Design and Educational Program established as part of the Project Scope and Budget Agreement and standards set forth by the Authority. Project elements that exceed or diverge from the project scope detailed in the Project Scope and Budget Agreement are categorically ineligible to receive funding from the Authority. The Eligible Applicant may retain such elements only by accepting sole financial responsibility for said elements in writing in a format prescribed by the Authority, prior to said Eligible Applicant including such elements in any designs.

4. Program Design

An Approved Project shall be designed based upon an Authority approved program for a specified number of students for a typical academic week. The program shall be approved by the district school committee and shall comply with requirements of law and current Department of Education regulations relative to curriculum, program, student learning time and length of school year.

5. Conformity with Established Timelines

The Eligible Applicant shall meet the timelines established by the Project Scope and Budget Agreement. If the Eligible Applicant does not meet said timelines, the Authority reserves the right to rescind the letter of project approval to the Eligible Applicant for the Project and the Eligible Applicant may reapply for the Project in a subsequent fiscal year.

6. Construction and Bidding Documents

The Eligible Applicant shall provide the Authority with bidding information and tabulation sheets within three business days of the submission of such bids, and shall provide any other documentation requested by the Authority.

7. Commissioning

The Authority shall engage an independent party, not associated with the design or construction teams for the Approved Project, to provide commissioning services with the intent of achieving, verifying and documenting the performance of building systems in accordance with the design intent and the functional and operational needs of the Eligible Applicant.

The commissioning process shall entail the development of clear and complete design and operational intent documentation, verifying and documenting proper equipment and system performance, ensuring appropriate operation and maintenance documentation is provided and ensuring sufficient training of building operations and maintenance personnel and building occupants. The Authority shall provide the Eligible Applicant with a completed commissioning report.

1.11: Total Facilities Grant Awards

The Board shall annually award Total Facilities Grants within the amounts and at such times as authorized by M.G.L. c.70B §§ 7 and 11. Total Facilities Grants shall be awarded to Approved Projects according to the terms, design and construction schedules, and conditions established in the Project Scope and Budget Agreement, Project Funding Agreement or any other agreement,

requirement, contract, statement, certification or other document as may be required by the Authority. The Authority reserves the right to rescind approval for Approved Projects which do not meet the requirements set forth in M.G.L. c.70B, 963 CMR 1.00 and/or any other agreement, requirement, contract, statement, certification or other document as may be required by the Authority.

1.12: Payment Requirements and Procedures

- (a) All Total Facilities Grants for Approved Projects shall be paid by the Authority in accordance with the Progress Payment Guidelines, the Project Funding Agreement, any other policies or guidelines that the Authority may have and M.G.L. c.70B § 11.
- (b) No payment for a Total Facilities Grant for an Approved Project shall be made before the execution of a Project Funding Agreement or a letter of project approval from the Authority.
- (c) Payments shall be subject to the MSBA Audit Guidelines and the Project Funding Agreement.
- (d) During construction, staff of the Authority may visit the construction site to determine that the project is being built as approved. Staff of the Authority shall review the monthly construction progress reports received pursuant to the Project Funding Agreement.
- (e) Change orders shall be reviewed by the Authority and the cost of owner directed change orders which are not delineated and exceed the provisions of the Design and Educational Program may be deemed ineligible by the Authority. The Authority shall review the completed facility, in operation, to ensure the project has been maintained and operated as delivered.
- (f) All construction contracts and sub-contracts shall conform with provisions of the Project Funding Agreement. Violations of the Project Funding Agreement may result in revocation of approval and withholding of funds.
- (g) All construction contracts shall be in conformity with applicable law and regulations related to minority hiring. Every Authority-assisted contract for a school project including sub-contracts shall include the Commonwealth's Supplemental Equal Employment Opportunity/Anti-Discrimination and Affirmative Action Program as part of the contract. Compliance with and enforcement of all safety and building code provisions, shall be the responsibility of the Eligible Applicant.
- (h) Every contractor and subcontractor working under the terms of any contract for construction on an approved school project shall file weekly payroll records with the awarding authority in the form described in M.G.L. c. 149, §27B. The awarding authority shall withhold payment for any construction work performed on an Approved Project for as long as the payroll records for the work performed are not filed with the awarding authority.
- (i) Each Eligible Applicant shall submit appropriate contractor and designer evaluations to the Division of Capital Asset Management and Maintenance and the Authority in a form, manner and timeline prescribed in M.G.L. c. 149, §44D and Chapter 7 §38E.

1.13: Audit Procedures

1. General Audit Process

In order to determine the eligible costs of an Approved Project and to ensure that only eligible costs are included in a Total Facilities Grant, the Authority shall conduct an Audit or Audits of

each Approved Project, at such time or times as may be required by the Authority. The Authority may designate any person it deems qualified to perform an Audit, and such person shall use agreed upon procedures, as determined by the Authority in the performance of said Audit or Audits. Such person shall certify to the Authority that he or she shall perform the Audit or Audits in compliance with the Massachusetts Conflict of Interest Law, M.G.L. c. 268A.

The Eligible Applicant shall cooperate with the Authority and its designee, if any, in the conduct of an Audit or Audits. Such cooperation shall include, but not be limited to, scheduling, provision of Audit Materials, provision of adequate work space, requests for documents, access to personnel with knowledge of the Approved Project, access to Approved Project-related materials stored electronically, or any other requirement for the thorough and expeditious conduct of the Audit.

Audits of Approved Projects shall be performed in accordance with MSBA Audit Guidelines, established by the Authority. To advise the Authority on appropriate audit guidelines, the Authority may convene an MSBA Audit Advisory Council, which may consist of representatives from the Office of the Auditor of the Commonwealth, the Office of the Inspector General of the Commonwealth, the Comptroller of the Commonwealth, Division of Local Services of the Department of Revenue, local officials, or other members which the Authority may determine.

Except as provided herein, the cost of the Audit or Audits shall be borne by the Authority. If the Authority determines that the Eligible Applicant has not reasonably cooperated with the Authority in the conduct of an Audit or Audits, is responsible for any delay in an Audit or Audits, is determined by the Authority to be making frivolous or non-meritorious appeals, the Authority may, in its sole discretion, deduct all or a portion of the cost of conducting an Audit or Audits from the Eligible Applicant's Total Facilities Grant, discontinue making payments to the Eligible Applicant or may seek to recover any payments that the Authority may have already made to the Eligible Applicant.

2. Monthly Progress Payment Audits

The Authority, or its designee, shall perform an Audit of each monthly payment requisition submitted by an Eligible Applicant for an Approved Project. Each Audit shall be conducted according to the MSBA Audit Guidelines. In the event that the Authority determines that an item in the submittal is ineligible for reimbursement, the Authority shall adjust the amount that is eligible for reimbursement. The Eligible Applicant shall receive from the Authority a summary document containing a listing of the eligible and ineligible costs as determined by the Authority.

If an Eligible Applicant does not concur with the findings of the monthly summary document, the Eligible Applicant shall respond, in writing of their intent to appeal, within ten days of said letter. The Eligible Applicant's written correspondence shall include a detailed listing of the specific ineligible costs to which the Eligible Applicant does not concur. For each ineligible cost, documentation that supports the Eligible Applicant's position shall be submitted. If no supporting documentation is included in a reasonable amount of time as determined by the Authority, the Eligible Applicant's non-concurrence of the summary document shall not be accepted and the audit findings shall stand. The Authority shall review properly submitted documentation to determine if the Eligible Applicant's appeal has merit or not and take the appropriate action thereafter. If the Authority determines the Eligible Applicant's support documentation is insufficient, the audit findings will stand and the Eligible Applicant will have exhausted any further appeal opportunities for those specific non-concurred ineligible costs. In no event including, but not limited to the final Audit, shall the Authority reconsider ineligible costs once an appeal has been settled. Costs of an appeal may be assessed to an Eligible Applicant.

3. Final Audit Report

A final Audit is required to determine the final Total Facilities Grant due to an Approved Project. The Authority, or its designee, shall prepare a draft report, in a form to be determined by the Authority, stating Audit findings and conclusions. The draft report may include findings, schedules and ineligible costs as determined by the monthly Audits performed for Approved Projects receiving funding from the Authority under the progress payment system. The draft report shall be reviewed by the Authority. Following the Authority review of a draft report, the report shall be made available to the Eligible Applicant.

The Eligible Applicant shall respond to the Authority's draft report in writing of their intent to appeal within ten calendar days from the date of the draft report letter. The Authority, in its sole discretion, may grant additional time in which the Eligible Applicant may respond, but in no event shall such additional time exceed an additional ten calendar days. These deadlines must be met in order to be eligible to appeal draft findings.

If an Eligible Applicant accepts the draft report, said Eligible applicant shall file said acceptance in writing within ten calendar days of the date of the draft report letter by concurring with the schedules, findings and ineligible costs contained in the draft audit report, in which case the draft report shall be submitted to the Board of the Authority for its review and approval. Acceptance of a draft report by an Eligible Applicant does not bind the Authority to take any action regarding the determination of the Final Project Costs of an Approved Project.

If an Eligible Applicant declines to accept the draft report, said Eligible Applicant shall respond in writing within ten calendar days of the date of the draft report letter of their intent to appeal. Said written correspondence shall include a detailed listing of the specific ineligible costs to which the Eligible Applicant does not concur and for each ineligible cost, documentation that supports the Eligible Applicant's position. If no supporting documentation is included in said written correspondence, the Eligible Applicant's appeal of the draft report shall not be accepted and the draft report, as originally reviewed by the Authority, shall go to the Board of the Authority for approval. The Authority shall review properly submitted documentation to determine if the Eligible Applicant's appeal has merit or not and take the appropriate action thereafter. If the Authority determines the Eligible Applicant's support documentation has no merit the audit findings will stand and the Eligible Applicant will have exhausted all of their appeal opportunities. Costs of an appeal may be assessed to an Eligible Applicant.

4. Record-Keeping

Eligible Applicants shall maintain all records related to an Application and an Approved Project, if approval for a Project is granted by the Authority, to ensure that minimum record-keeping requirements to facilitate uniform, fair and efficient administration are met and to ensure accountability for all documents. Nothing in 963 CMR 1.00 *et seq.* is intended to alter the otherwise applicable requirements of M.G.L. c. 66, pertaining to the keeping of public records and access thereto.

It shall be a condition on every Eligible Applicant that the Eligible Applicant maintain in a secure place and in an organized fashion all records necessary to evidence conformity with M.G.L. c. 70B, 963 CMR 1.00 *et seq.*, and any other requirements of the Authority.

The Eligible Applicant shall maintain all records related to an Approved Project, including a full set of the Construction Documents, Bid Documents and "As-Built" drawings, for as long as Approved Project is in service as a public school. For the purposes of this section, all records shall include, but not be limited to, all executed contracts and purchase orders, including contract amendments and change orders, Owner's Project Manager's reports, including monthly progress report, issues log, potential change order log, meeting minutes, schedule or milestone summary, all requests for reimbursement and forms as submitted to the Authority, invoices and contractors'

applications for payment, and other such other information, data, logs, documentation, or records as may be required by the Authority.

The Authority shall, in its sole discretion, disallow any costs not adequately supported by contemporaneous, accurate and complete records.

5. Ineligible Costs

Categorically ineligible costs shall include, but not be limited to,

- (a) Any costs for an Approved Project in excess of the Total Facilities Grant.
- (b) Financing costs incurred by an Eligible Applicant, including, but not limited to, interest, principal or costs of issuance or any other cost related to short or long term bonds, notes or other certificates of indebtedness, refunding notes or bonds, temporary loans, or any other form of indebtedness issued by an Eligible Applicant in relation to an Approved Project shall be categorically ineligible costs and not reimbursable by the Authority. Financing costs incurred by an Eligible Applicant, including, but not limited to, all costs related to rating services, legal services related to the issuance of any indebtedness, or costs related to financial consulting services shall be categorically ineligible costs and not reimbursable by the Authority.
- (c) The cost of legal services.
- (d) The provision of any direct or indirect municipal services shall be ineligible costs, except the provision of public safety services as required by law, or services which the Authority determines are necessary for the completion of the Project.
- (e) Any funds expended by the Eligible Applicant prior to the execution of a Project Funding Agreement between the Authority and the Eligible Applicant and the receipt of a letter of project approval, shall be ineligible costs and not reimbursable by the Authority unless the Board votes to allow reimbursement of such expenses incurred prior to the execution of the Project Funding Agreement and receipt of a letter of approval.
- (f) All costs associated with site acquisition.
- (g) All costs associated with the operation and routine maintenance of an Assisted Facility.
- (h) Any costs determined to be ineligible by the Authority during the course of an Audit and/or in the MSBA Audit Guidelines.

1.14: Minimum Spending Requirements for Building Maintenance

Pursuant to M.G.L. c.70B §8, the Authority shall not approve any project for any school district that fails to spend in the year preceding the year of application at least 50 percent of the sum of said school district's calculated foundation budget amounts for the purposes of foundation utility and ordinary maintenance expenses, and extraordinary maintenance allotment as defined in M.G.L. c.70, for said purposes. From fiscal year 1999 forward, no school district shall be approved for a project nor receive school facilities funds unless said district has spent at least 50 percent of the sum of said district's calculated foundation budget amounts in each of the fiscal years including and succeeding fiscal year 1999.

If an otherwise Eligible Applicant fails to maintain compliance with the building maintenance requirements of M.G.L. c.70, 963 CMR 1.00 *et seq.*, or any guidelines, policies or procedures

established by the Authority, said Eligible Applicant shall be prohibited from receiving a Total Facilities Grant for at least one year and shall be subject to a review of the Authority to determine, that after said prohibition, said Eligible Applicant has complied with said requirements.

1.15: Grant Percentage Formula

1. General

The Total Facilities Grant established for an Approved Project shall be determined by the Authority based on the grant percentage formula established pursuant to M.G.L. c.70B §10, the Project Scope and Budget Agreement, and the cost of the Approved Project as agreed to by the Eligible Applicant and the Authority in the Project Funding Agreement.

In addition to the base percentage, community income factor, community wealth factor and community poverty factor for the most recent available year applicable to the Eligible Applicant under the determinations made in said section 10, an Eligible Applicant may seek incentive percentage points at the discretion of the Authority. There is no entitlement to the allocation of any incentive percentage points and the Authority reserves the right in its sole discretion to determine the allocation of incentive percentage points for an Approved Project, if any. Any Eligible Applicant seeking incentive points must notify the Authority in writing 30 days prior to the Project and Budget Scope Agreement conference of the specific incentive points which are being requested and the documentation to support such request. If at any time the Authority determines that the Eligible Applicant has not met the eligibility requirements necessary to receive the incentive percentage points, the Authority reserves the right to rescind any grant amounts related to the allocation of the incentive percentage points.

2. Innovative Community Use

Innovative Community Use incentive percentage points may be allocated to an Approved Project at an amount up to 3% where the Authority makes a determination that elements of an Approved Project demonstrate truly innovative use of a facility, and may be allocated for an Eligible Applicant's plan to utilize other community resources which directly result in the reduction of cost or scope to the Approved Project. The Authority may, from time to time, establish guidelines for the distribution of Innovative Community Use incentive percentage points.

3. Energy Efficiency

Energy Efficiency incentive percentage points may be allocated to an Approved Project in an amount up to 2% where the Authority makes a determination that elements of an Approved Project meet the threshold established in the Green Schools Guidelines for the allocation of Energy Efficiency incentive points.

4. Maintenance Rating

Maintenance Rating incentive percentage points may be allocated to an Approved Project in an amount up to 8%, including any incentive percentage points awarded for the establishment of a "School Facility Maintenance Trust" where the Authority makes a determination that the Eligible Applicant has exhibited best practices for maintenance and upkeep of facilities, including the establishment of long term capital improvement plans, the establishment of segregated local funds dedicated for the capital maintenance of school facilities, the use of facility maintenance manuals that standardize preventative and routine maintenance procedures, or other practices as determined by the Authority. An Eligible Applicant's maintenance practices shall be reviewed as part of the Facilities Assessment and the information collected at this time shall be used as part of the assessment of incentive percentage points for maintenance ratings herein.

An Eligible Applicant may receive a cash grant in excess of the Total Facilities Grant in an amount up to 1% for the establishment of a local "School Facility Maintenance Trust" which shall be a segregated local fund used solely for the preventative maintenance and upkeep of an Eligible Applicant's school facilities. To be eligible to receive "School Facility Maintenance Trust" match, the Eligible Applicant must provide a local one-for-one match for any funds deposited in the Trust by the Eligible Applicant. Proceeds from said Trust shall not be used for operating or recurring costs, salaries, purchase of routine maintenance supplies, other expenses which the Authority deems to violate the spirit of the Trust, or to supplant any maintenance funding already being expended by the Eligible Applicant.

5. Private Match

Private Match incentive percentage points may be allocated at a rate of $\frac{1}{2}\%$ for every 1% of project cost raised for the capital construction of the facility from non-public sources, which may include private fundraising, in-kind grants, bequests, land grants, mechanical equipment, or other non-public donations presented by the Eligible Applicant, in the discretion of the Authority.

6. Alternatives to Construction

Alternatives to Construction incentive percentage points may be allocated to an Approved Project in an amount up to 4%, in the discretion of the Authority. The Authority may allocate up to 1% from this category for projects utilizing the Construction Management at Risk construction delivery method as certified by the Inspector General of the Commonwealth and pursuant to the Construction Manager at Risk Guidelines established by the Authority.

1.16: Program Integrity.

Where the Authority determines that false or intentionally misleading information or documentation was submitted by an Eligible Applicant in support of any effort to obtain acceptance of an Application, approval for a Project, reconsideration of an appeal, granting of waiver or any other action or forbearance by the Authority, or an Eligible Applicant does any other act affecting the integrity of the Program, the Authority may permanently revoke any and all payments due to an Eligible Applicant, the Authority may take steps to recover any previous payments made to an Eligible Applicant and/or said Eligible Applicant shall be prohibited from receiving a Total Facilities Grant for a period of time to be determined by the Authority.

1.17: Waivers

The Authority may, upon written application in a format prescribed by the Authority and with the written recommendation of the Executive Director to the Board, grant a waiver of any of the requirements of these regulations.

1.18: Closing Schools

An Eligible Applicant must notify the Authority in writing, in a format prescribed by the Authority, six months prior to the sale, lease or removal from service as a public school building of any school facility in said Eligible Applicant's school district. The Eligible Applicant also must submit a plan for accommodating any displaced school programs or services and a plan for accommodating district students within remaining school building, as a result of the sale, lease or removal from service of said school facility.

If the Authority determines that said facility that will be sold, leased or removed from service is an Assisted Facility or was an Assisted Facility that has received full payment from the Authority or the Commonwealth, but has not met the 50-year service requirement, the Authority may recapture a portion of the financial assistance that said Assisted Facility may have received.

If an Eligible Applicant were to apply to the Authority for a grant, after having sold, leased or removed from service a school facility, said Eligible Applicant may be eligible for a grant only if the Authority determines that the grant is not for the purpose of replacing a school facility sold, leased, or removed from service in the past ten years or that the need for the grant could not have been reasonably anticipated at the time of the sale, lease, or removal from service.

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